

Remarks

The Applicant provisionally elects Group I , claims 1-5, for initial examination in this application.

In the official action, the Examiner asserts that the device of Group I could be made by a process materially different from those of the Group II invention. It is noted that this assertion has been made by the Examiner without providing any examples or other evidence to support the Examiner's conclusion. Exactly what process that would be materially different from that of claim 6 could be used to produce the device of claim 1? It is noted that the MPEP specifically instructs the Examiners to provide reasons of examples to support the Examiner's conclusions. See MPEP 308.01.

It is also to be noted that a mere difference between some hypothetical method and the method of claim 6 would not suffice to meet the test for restriction. Rather, there must be a "material" difference. Since the Examiner has not set forth any difference, much less a material difference, as specifically required by the MPEP, the Examiner's action in making the election/restriction requirement is improper and should be withdrawn on that basis.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents

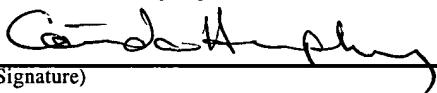
PO Box 1450, Alexandria, VA 22313-1450 on

November 15, 2004

(Date of Deposit)

Corinda Humphrey

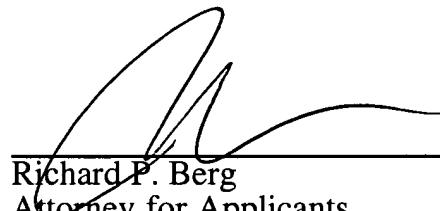
(Name of Person Signing)

  
(Signature)

November 15, 2004

(Date)

Respectfully submitted,

  
Richard P. Berg  
Attorney for Applicants  
Reg. No. 28,145  
LADAS & PARRY  
5670 Wilshire Boulevard, Suite 2100  
Los Angeles, California 90036  
(323) 934-2300